29

Office - Supreme Court, U. S.
FILED
SEP 23 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 115

D. P. SKOUSEN, COIT I. HUGHES, H. B. HUGHES, AND H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA.

REPLY BRIEF FOR PETITIONERS.

JOHN J. MCCULLOUGH,
Counsel for Petitioners.

E. E. SELDEN,
Of Counsel.

INDEX.

Table of Cases Cited.

	Page
Atchison, etc., Ry. v. *Lowers*, 213 U. S. 55	2
Chambers v. *Baltimore, etc., R. R.*, 207 U. S. 142	2, 3, 4
Chicago, etc., Ry. v. *Perry*, 259 U. S. 548	2
Haire v. *Rice*, 204 U. S. 291	2, 4, 5
North Carolina R. R. v. *Zachary*, 232 U. S. 248	2
Ontario Land Co. v. *Wilfong*, 162 Fed. 999, 223 U. S. 543, 56 L. Ed. 544	2
Rector v. *City Deposit Bank*, 200 U. S. 405	2
San José Land & Water Company v. *San José Ranch Co.*, 189 U. S. 177	4, 5
Smith v. *City of Los Angeles*, 158 Cal. 702, 112 Pac. 307	6

Statute Cited.

Arizona Code of 1928, Section 3084	5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 115

D. P. SKOUSEN, COIT I. HUGHES, H. B. HUGHES, AND H. L. MOSHER,

Petitioners,

vs.

CONSOLIDATED MOTORS, INC.

REPLY BRIEF OF D. P. SKOUSEN, COIT I. HUGHES, H. B. HUGHES, AND H. L. MOSHER, IN RESPONSE TO RESPONDENT'S BRIEF.

Summary of Argument.

1. The opinion of the State court must be considered as a part of the record in certiorari proceedings, and the opinion in the instant case shows that your petitioners were deprived of their property without due process of law.

2. There are two Federal questions squarely raised by the record in this cause.

ARGUMENT.

Jurisdiction.

When it does not appear elsewhere in the record the Supreme Court will consider the opinion of the lower court to determine if Federal question was considered or not.

Rector v. *City Deposit Bank,* 200 U. S. 405, 412;
Haire v. *Rice,* 204 U. S. 291, 299;
Chambers v. *Baltimore, etc., Railroad,* 207 U. S. 142, 148;
Atchison etc. Railway v. *Lowers,* 213 U. S. 55, 62;
North Carolina Railroad v. *Zachary,* 232 U. S. 248, 257;
Chicago etc. Railway v. *Perry,* 259 U. S. 548, 551.

The minimum requirement of due process of law has always been recognized to be that the proceedings must be in accord with natural justice.

Where the description of property is insufficient to identify it with reasonable certainty the proceedings will be held void.

Ontario Land Co. v. *Wilfong,* 162 Fed. 999, 223 U. S. 543, 56 L. Ed. 544.

Therefore when the State court said (R. 102, 103) that a description according to an unrecorded map, of which the appellants were not shown to have had any knowledge, and in a summary proceeding, is sufficient, the existence or nonexistence in the instant case, of due process of law is inherently and of necessity the real bone of contention.

When the State court further said (R. 105), that although a lot was sold as a unit, that one half thereof can be redeemed and then a deed issue to the remaining one-half, the question of due process of law is necessarily involved because the one half a lot for which the deed was issued had never been assessed, advertised, nor sold.

It was impossible, of course, for your petitioners to raise the question of due process of law by motion for new trial in the Supreme Court of the State; or in the assignments of error, for the reason that the lower court decided in favor of petitioners, and as the complaint failed to disclose the foundation of respondent's claim (R. 1) there was no opportunity afforded for petitioners to raise the question of due process of law in the taxation proceedings, until the failure to observe the fundamental principles of such due process was pointed out at length in the opinion of the Supreme Court of the State of Arizona, itself, and the very matters which constitute such deprivation of due process are referred to as the questions in the case.

Under such circumstances it would seem to be in the interest of justice that this Court should exercise its discretion to consider the matters involved upon the certiorari.

Moreover in the instant case the matter of a proper description is an indispensable part of notice, and lack of all notice is lack of due process.

Our Supreme Court decided that the notice was sufficient; this decision was essential to the case and necessarily implied that the proceedings accorded your petitioners due process of law, for no notice is or can be sufficient unless it is in accord with natural justice. Had our Supreme Court decided that the description was insufficient to give notice this would have been tantamount to finding lack of the essence of due process. It was not necessary for the opinion to speak of due process of law in so many words for the interpretation which the court placed upon two sections of the Arizona Code Annotated 1939, in and of itself, necessarily, in this particular case, deprived your petitioners of due process of law.

In support of this contention petitioners make particular reference to the cases of

Chambers v. *Baltimore and Ohio R. R. Co.*, 207 U. S. 142;

and of

Haire v. *Rice,* 204 U. S. 291;

from which cases we quote as follows:

Case 1 (*Chambers'* case)

"The Supreme Court held that the action authorized by this statute for the death was that of a citizen of Ohio; that the common law of the State forbade such action; and that as the person, for whose death damages were demanded in this case, was not a citizen of Ohio, the action would not lie. The plaintiff brings the case here on writ of error, ALLEGING THAT THE STATUTE THUS CONSTRUED AND THE JUDGMENT BASED UPON THAT CONSTRUCTION VIOLATES ARTICLE IV, SECTION 2, PARAGRAPH 1, OF THE CONSTITUTION OF THE UNITED STATES, which provides that

> 'The citizens of each state shall be entitled to all privileges and immunities of citizens of the several states.'

"This allegation presents the only question for consideration. * * *. But it clearly and unmistakably appears from the opinion of the Supreme Court that the Federal question was assumed to be in issue, was decided against the claim of Federal right, and that the decision of the question was essential to the judgment rendered. This is enough to give this court the authority to reexamine the question on writ of error.

San Jose' Land and Water Company v. *San Jose' Ranch Company,* 189 U. S. 177;
Haire v. *Rice,* 204 U. S. 291."

Chambers v. *Baltimore & Ohio R. R.,* 207 U. S. 142 at 148. (CAPITALS OURS.)

Case 2 (*Haire* case)

"Where it clearly and unmistakably appears from the opinion of the state court under review that a

Federal question was assumed by the highest court of the state to be in issue, was actually decided against the Federal claim, and the decision of the question was essential to the judgment rendered, it is sufficient to give this court authority to reexamine that question on writ of error.

San Jose' Land & Water Company v. *San Jose' Ranch Company,* 189 U. S. 177."

Haire v. *Rice,* 204 U. S. 291 at 299.

Opinion as Depriving Petitioners of Due Process.

Second. Your petitioners were deprived of due process of law because

a—the property was advertised for sale according to an unrecorded map prepared by the assessor, or, the map speaks on its face (see the petition at page 22), which may be in the catefory of a map made under the provisions of Section 3084, Arizona Code of 1928. However, these petitioners hold such law gives the assessor the right to delineate conditions as they exist and that the using of such a map on his part, if upheld by the courts would create a law permitting assessorially dedicated plats with streets and alleys therein. These petitioners were deprived of their DUE PROCESS in a summary proceeding and without claim of either constructive, or actual, notice to the petitioners of its existence.

b—Lot 8 Block 1, of Churchill, was advertised and struck off to the State of Arizona as a unit and thereafter the South Half was redeemed by the owner of the said South Half and some five months laters the appellees demanded from the treasurer the redemption money which was paid to them and acepted by them. Thus they ratified the redemption as to themselves but the owner of the North Half has never yielded his position that this redemption was an infringement of his personal rights under the Constitution

in accordance with others similarly situated. The law required that the segregated North Half should be then advertised as a unit in itself.

Then without advertising, or notice of any kind to the owner, the treasurer issued a deed to the North Half, only to Wayland and Holmes, predecessors of respondent.

On the question of the UNRECORDED Assessor's Map, set forth in Part a, the respondent relies largely upon the case of

Ontario Land Co. v. *Yardy*, 212 U. S. 152, 29 S. Ct. 278.

We think the decision in that case was predicated upon two facts, neither of which exists in the instant case.

First. In the *Yardy* case the plaintiff knew that the authorities were attempting to assess and tax the "Reserved" tract under the description of blocks 352, etc.

Second. It appears from the *Yardy* case that there had been a foreclosure proceeding and judgment of a competent court, foreclosing the lien of the State for taxes.

The nearest approach to an identical case to the one at bar upon the facts, as far as your petitioners have been able to find, is the case of

Smith v. *City of Los Angeles, et al.*, 158 Cal. 702, 112 Pac. 307 at 308, 309;

from which we quote as follows:

QUOTATION.

> "There is no claim that the state board ever required any of these things. The copy of the map contained in the transcript shows that it does not comply with such requirements, if they were made, except that the number of acres inclosed by some of the lines marked thereon are indicated by figures followed by the letter 'A.' The map shows the outlines of a part of the Rancho Los Feliz, but not all of it. These are crossed

by North and South lines and East and West lines, dividing the portion platted into squares of equal size inside and fractional parts of squares next to the exterior bounds. There is no evidence that these lines are founded on any survey or that the rancho was ever surveyed and subdivided into lots corresponding to these squares by the owner, or by the assessor, or at all. Section 3629 of said Code authorizes the assessor to exact a statement from each landowner containing an exact description of his lands in parcels and subdivisions, not exceeding 640 acres each. Section 3634 provides that if the owner fails to do this, or fails to give a sufficient description, the assessor may obtain from the superior court an order requiring the county surveyor to survey the land and define the subdivision for the assessor. There is no evidence that this was done or that the assessor's map represents any such survey. The maps and plat provided for by section 3654 were not intended to represent any actual survey, or surveys. The owners are not consulted in their preparation nor allowed any opportunity to see that they are correct, and they are not binding upon him. They are mere compilations embracing the entire county made under the direction of the board of supervisors, or by the assessor, upon such information as may be at hand. THEY ARE DESIGNED MERELY TO FACILITATE THE BUSINESS OF THE OFFICE, AS A CONVENIENT EXHIBITION OF ALL THE LANDS IN THE COUNTY TO WHICH THE OFFICERS CAN REFER IN THE DAILY ROUTINE OF BUSINESS.

It is not shown that the subdivisions indicated on the map by the parallel lines have ever been marked on the ground, or that they coincide with the section lines outside the rancho, or that they can be located by any visible marks or markings or at all.

THEY ARE MERE ARBITRARY LINES DRAWN ON PAPER IN SOME OFFICE WITHOUT ANY REFERENCE WHATEVER TO ACTUAL CONDITIONS ON THE PREMISES * * *.

> The picture has no counterpart on the surface of the land. It cannot serve to identify the land, for the location of the tracts indicated cannot be ascertained."

This quotation bears out exactly the argument made in petitioners' opening brief and shows the reason why a map prepared by the assessor, identical to the assessor's map introduced in evidence in the instant case is no notice of the descriptions therein contained, and the opinion of our State Supreme Court holding that a description based upon such a map is sufficient deprives your petitioners of their property without due process of law.

On the Question of Re-advertising as Set Forth in Part — b.

No response whatever is made to the showing of petitioner D. P. Skousen that he was deprived of his equity of redemption in the North Half of Lot 8, Block 1, without due process of law.

Under our law redemption can be made at any time prior to the actual issuance of a deed by the county treasurer.

Petitioner Skousen was not injured by the redemption of the South one-half of Lot 8 by its owner, but when this South one-half was redeemed it became incumbent upon the assessor to re-assess the North one-half for the purpose of taxation or else the owner would be deprived of his property without any semblance of process of law whatever, as petitioners have shown in the petition and brief on certiorari.

Conclusion.

It is respectfully submitted that the record shows that questions involving the necessary requisites of due process of law were decided by the State Supreme Court and that

the grounds specified in the petition are sufficient and a writ of certiorari should be granted.

Respectfully submitted,

JOHN J. MCCULLOUGH,
Attorney for Petitioners,

612 Luhrs Tower,
Phoenix, Arizona.

E. E. SELDEN,
Of Counsel.

(6331)